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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

MELVIN MORRIS, ET AL., *Petitioners*

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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1. In resisting certiorari in the present case, the government argues that the statute prescribing a ceiling on the accumulation of leave (28 U.S.C. § 2062(*e*)) precludes restitution for annual leave which an employee was prevented from taking by reason of an illegal discharge. Petitioners submit that this statute is inapposite.

Each of the four Petitioners was illegally separated from government service for a period of about five years. Each Petitioner would have been entitled to annual leave with pay at a rate of about 20-25 days per

year during this period, or a total of roughly 100-125 days.* The government's position is that 28 U.S.C. § 2062(c) limits the amount of leave which may be accumulated to thirty days, and that although Petitioners were unable to take annual leave by reason of the government's illegal conduct, they are not now entitled to reimbursement for any leave lost in excess of this 30-day maximum.

Nothing in the controlling statute (5 U.S.C. § 22-1) supports the government's thesis. And it is plain that the statute imposing a ceiling on the amount of annual leave which an employee may accumulate is addressed to a totally different situation from that presented here. 28 U.S.C. § 2062(c) was designed, as Respondent puts it, "to encourage employees to take a period of rest each year" (Opp. Br. p. 6) and to prevent disruption in the orderly conduct of the government's business which would arise if employees accumulated and took protracted periods of leave. The statute was intended, in other words, to inhibit federal employees from voluntarily and deliberately deferring their annual leave. But Petitioners in the present case did not seek to accumulate leave. To the contrary, they were prevented by the government's illegal action from taking the annual leave to which they were entitled. In sum, neither the language nor the policy of 28 U.S.C. § 2062(c) is applicable to a situation involving an illegally discharged employee who seeks restitution for leave which he was prevented from enjoying by reason of conduct adjudged to be unlawful.

* The leave with which Petitioners were credited upon reinstatement referred to in footnote 3 of the government's brief (p. 5), was leave accrued *prior* to the employees' discharge. Petitioners did not receive any reimbursement for leave in excess of 30 days which accrued during the period of their invalid separation.

The Court of Claims, in *Hyaning* v. *United States*, 141 Ct. Cl. 486, rejected the government's contention in these words (*Id.* at 494):

> "We are of the opinion that permitting the crediting of leave to the plaintiff even though it exceeds his individual 'ceiling' does not violate the Congressional intent in placing a 'ceiling' upon the accumulation of leave. The purpose of the statutory ceiling on accumulated leave was to encourage Government employees to take their leave as it accrued within certain limits, in order that the employees might have the benefit of regular vacations and the employing agencies might not accrue large obligations for unpaid leave as had been necessary during the war period when it was not in the national interest to permit employees to take all of their annual leave. See Senate Report No. 294, 83d Cong., 1st Sess. This policy of limiting leave accumulations was not intended to cover employees who, because of their suspension or termination under the Act of August 26, 1950, could not possibly use their annual leave in conformity with this policy."

2. The government contends that because "petitioners were unable to take annual leave as such does not now entitle them to special compensation. For, in reality, they lost nothing." (Opp. Br. p. 7). An example may illuminate the invalidity of the government's position. Let it be assumed that a federal employee, earning $8000 annually, and entitled to 30 days leave with pay, is invalidly discharged. Assume further that the employee succeeds in obtaining a position with a private employer at an identical salary, but that in view of his period of employment he is accorded only a week's leave with pay. The government's position in the present case is that an employee who gets one week's vacation instead of a month has "in reality . . . lost nothing." This view offends com-

mon sense. In terms of the foregoing example, the issue in the present case is whether the invalidly discharged employee is to be reimbursed for the value of the three weeks' leave which he lost because of the government's illegal conduct.

3. The government in its brief strives to deprecate the importance of the question presented. The issue has been presented to the Court of Claims in a number of cases; that Court has backed and filled on the question (see Petition, p. 8). The issue is pertinent to every federal employee who was invalidly discharged as a security risk under 5 U.S.C. § 22-1 and who now seeks restitution. We respectfully submit that the issue should be authoritatively resolved by this Court, and that the writ should issue.

Respectfully submitted;

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